

Procedure Following New Ground of Rejection by Board

When the Board makes a new rejection under 37 CFR 41.50(b), the Appellant, as to each claim so rejected, has the option of:

- (A) reopening prosecution before the examiner by submitting an appropriate amendment and /or new evidence (37 CFR 41.50(b)(1)); or
- (B) requesting rehearing before the Board (37 CFR 41.50(b)(2)).

In this case, Applicants Oct. 8, 2008 amendment has been treated as a request to reopen but the amendment is improper under MPEP 1214.01 as noted below and will not be entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The BPAI decision on Sept. 30, 2008 states:

“Claim 14 recites that the bucket assembly includes a floor assembly and a rear wall assembly for supporting any variable sized containers, the rear wall assembly including a substantially coplanar surface, where one surface of the coplanar surface is raised with respect to another surface of the coplanar surface. We do not understand how one surface of a coplanar surface can be raised with respect to another surface of a coplanar surface because by definition

a coplanar surface has all surfaces contained in a single plane. We therefore, pursuant to our authority under 37 C.F.R. § 41.50(b), enter a new ground of rejection of claim 14, and claim 15 which depends therefrom, under 35 U.S.C. § 112, second paragraph as indefinite for the reasons set forth above.” Page 16.

Claim Rejections – The Merits

Pursuant to a rejection on the merits- The amendment filed Oct. 8, 2008 after a decision by the Board of Patent Appeals and Interferences is not approved for entry because prosecution is closed and the proposed amendment was not suggested in an explicit statement by the Board under 37 CFR 41.50(c). As provided in 37 CFR 1.198, prosecution of the proceeding before the primary examiner will not be reopened or reconsidered by the primary examiner after a final decision of the Board except under the provisions of 37 CFR 1.114 (request for continued examination) or 37 CFR 41.50 without the written authority of the Director, and then only for the consideration of matters not already adjudicated, sufficient cause being shown. Thus, the status of the claims as stated in the Board’s Decision on page 21 is-

“The decision of the Examiner to reject claims 1-7, 9-13, 16, 17, and 19-26 is
AFFIRMED.

The decision of the Examiner to reject claims 8, 14, 15 and 18 is REVERSED. “

Thus, Applicant must correct the 35 USC 112, second paragraph rejection of claims 14-15, rewrite dependent claims 8 & 18 in independent form including all of the limitations of the base claim and any intervening claims and cancel claims 21-26 else the case will be abandoned.

Response to Arguments

Applicant's arguments filed Oct. 8, 2008 have been fully considered but they are not persuasive under MPEP 1214.01 and the Board's decision.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to GREGORY W. ADAMS whose telephone number is (571)272-8101. The examiner can normally be reached on M-Th, 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on (571) 272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory W Adams/
Primary Examiner, Art Unit 3652